

Board of Selectmen Meeting
April 9, 2014

A Board of Selectmen meeting was held on Tuesday, April 9, 2014 in the Community House to discuss the Cape Ann Tool Company property; five selectpersons, the Town Administrator and the Asst. to the Town Administrator were in attendance.

7:30 pm Meeting Called to Order

Chairperson Battistelli introduced the board members and staff in attendance, Ben Lynch from DEP/Chapter 91 office and Gerry Falco, Rockport's Conservation Agent. She indicated this was not a debate, and no decisions were going to be made tonight. She said this is an opportunity for everyone to find out the status of the project.

Ben Lynch said primarily Chapter 91 is a state law regarding water access, harbor use, uses of public areas. He said there are approximately 18,000 to 19,000 Chapter 91 licenses state-wide. Their focus is to preserve and promote water dependent uses. Non-water dependent and water dependent are the two critical areas. This particular project is primarily residential, though there is some in-water work proposed; floats, ramps, fixed piers, it's a non-water dependent project. By statute, public benefits have to outweigh any detriment. It's about public access to the water's edge.

Ben Lynch presented the existing 2008 license for Pigeon Cove. He said it previously had a water side walkway that went the whole length of the site. It had public open space, publicly accessible parking, with public restrooms. He said the idea is that the public spaces be landscaped, they remain open, and that they have signage and lighting, depending on the wishes of the community. There was an amendment by the new owner in February of 2013; they targeted a different market, with a single family arrangement. Alex Strycky had a public hearing in May, 2013. He said the final plans were received by DEP/Waterways yesterday, 4/7/14. He said there are still some things that have to be worked out. The proposal includes some crushed gravel next to the water's edge; he said this is somewhat unusual though there are no regulations prohibiting this. The gravel area is planned for winter storage when floats are out of the water. He said they'll be looking for more information on the extent of the crushed gravel area. He said they have received lots of public comment from Rockport. The fact that the public comment period was exhausted 10 months ago doesn't mean the input they received isn't being considered.

Gerry Falco, Conservation Commission, said they enforce two laws, the Wetlands Protection Act and the local Rockport Wetland Protection Bylaw. She said the Conservation Commission can permit or not permit based on if it's going to impact the resource area. She said in 2006 the applicant presented a plan to demolish all structures on the site and construct six townhouses, a parking lot and a waterfront walkway. There were public hearings and many residents appeared. In February of 2007 the Conservation Commission issued an order of conditions permitting the project. In 2013 a different applicant submitted a notice of intent to put floats in the harbor. On 8/9/13 the Conservation Commission issued an order of conditions under a different DEP number (62-0672). The same applicant requested an amendment to the order of conditions, on the original order of conditions, (62-0507) with changes on the land side, not on the water. They were not going to build townhouses, but thirteen (13) single family house lots, keeping a commercial project in the middle, harbor walk, and concentrating the parking lot in one area. Public meetings were held, and on 3/12/14 the Conservation Commission issued an amended order of conditions, the project was allowed. G. Falco said the DEP can't do their work until Rockport's Conservation Commission has issued an order of conditions. In March of 2014 the Conservation Commission just issued the order of conditions – she said they only work on the environment. She said the reason information is coming in so late from the applicant is because they just issued the amended order of conditions in March. How the project will impact the wetlands is their criteria. We don't look at the buildings; it's just how the project will impact the environment. The permit would be denied if it was deemed harmful.

Chairperson Battistelli said we don't have a lot of information on other local permitting status. Peter Bergholtz, Chairperson of the Zoning Board of Appeals said that they have not received final plans, and no application is in front of them so this is speculation. He said it looks as though some of the lots are less than 40' wide, they would need special permits, if that's the case. Machine Shop Building, large bldg. in the middle, there was a special permit issued for Kaneb on that building (restaurants, shops, etc.). That is the permit as it exists now.

Chairperson Battistelli stated that she understands that the Bldg. Inspector would need more detailed information about the buildings before permits could be issued.

Hank Betts, 13 Penzance Road, Planning Board, questioned what will happen if the water taxi fails.

B. Lynch said DEP doesn't regulate water taxis, if the water taxi is not used, if it's not a going concern, they may have to come back to the DEP and propose other uses.

Jim Waddell, Prospect Street, questioned if the DEP just received the amendment yesterday, wouldn't they have to hold another public hearing.

B. Lynch said what was received yesterday were final plans to the original application. He said they are not intending to hold another public hearing; though they haven't had a chance to review the plans completely. If any application has changed significantly, they could require a public hearing. It doesn't look like the case here.

Jim Waddell questioned how those floats are going to be anchored, can boats stick into the channel, and how much of the in-water portions have changed.

B. Lynch said we have to look at the original plan and the amended plan to see how much of the in water portion has changed, if any.

Selectperson Wilkinson said from original hearing in May, there have been so many changes. She asked if we are going to see final plans before a license is issued.

B. Lynch said this will be a judgment call. If we think the plans have changed that much, we could hold another hearing.

G. Falco said the April 7, 2014 submittal was a response to the Conservation Commission as result of their requests. She said she has all Chapter 91 information; it is available for anyone to look at.

Charles Peterman, Pleasant Street, said regarding environmental protections, with the body of water, sediment was the problem; it accumulated the material from the old tool and die. He questioned what is the rate of contamination from the heavy metals, what is the mitigation plan; what is the effect on Front Beach, Back Beach, etc. This could impact the town substantially.

G. Falco said lots of soil samples have been conducted. There are not major sediments chemically in the soils. Soil samples were done on the site in 2003 or 2004, there was a sampling on the site; the hot spots were taken care of. They were dug up and removed from the site.

Larry Stepenuck said the Conservation Commission can sign off on some things. Their governance may have signed off inadvertently on the continuous walkway. This is a significant difference with access to the southeast corner, near the channel where people have been fishing. People are being prevented from fishing near the mouth of that harbor.

Ben Lynch said that is a Chapter 91 license issue, access to the water's edge. This application doesn't have that and we will continue to work with the developer/owner to resolve this issue.

Toby Arsenian questions if this is a license amendment instead of a new application; nothing was to impinge on the path. The retaining wall between the paths is now narrowed to 10' and 8' going out from breakwater which would prevent people from using the gravel area. There is no park, the path went the entire length and was 13' wide, and nothing was to impinge on the path. The parking is diminished, who has the jurisdiction for parking. The float that goes from Lot 11 and across the inlet completely cuts off a section of the harbor which could be useful for moorings. Transient moorings are very much needed, but the harbor master has to have control of it. The water taxi won't last.

Eric Hutchins, 45 Poole's Lane, said he means no offense to the Conservation Commission process, but they have no jurisdiction on public access. These are Chapter 91 issues not the Conservation Commission's. The little park area, under what performance standards would the state say it's OK to give up an area that is valuable to the public?

Ben Lynch said the regulations require public access (water dependent use zone) which goes right to end of site. He said he can't think of a scenario where that wouldn't be denied.

June Michaels, Landmark Lane, said the walkway runs along retaining wall, she questioned the height of the retaining walls.

Ben Lynch said they're low. He said they just learned about the gravel; this needs to be discussed with the developer.

June Michaels said Mother Nature tends to throw things about, can they insist on native vegetation be planted there?

G. Falco said there will be 1' and 2' walls; some of this is flood prone. They're going to raise the levels, 2' to 3'. The new flood zones coming out will not be velocity zone, they will be over wash zone. Bushes will try to slow down the water.

June Michaels said these are 14 long, narrow lots. She questioned if the subdivision for the property has been approved?

Hank Betts said 50' frontage is all that is required. They have not seen any plans yet. He said they have to tear down the buildings, and then come to the planning board, lot by lot, but that just talks about frontage and setbacks. Interaction with the developer. Rights of fishermen, we are told by developer that they've had many discussions.

Bruce Reed, Pigeon Hill Street, said he has a Chapter 91 question. He said he is concerned about the layout of the float scheme. The float that goes from mouth of the harbor, it looks like it will impact the mooring field. Finger piers are in the channel for large boats. On their plans is there anything to show the impact of their development on the public harbor.

Ben Lynch said we do not regulate vessel activity, but we do regulate structures in the water and their effect on channels, etc. These structures should not impair navigation.

Bruce Reed questioned if the DEP would ask them for more clarification. How do the boats navigate if a large boat is there?

Jeff Tutein, Moraine Ct., current President of the Pigeon Cove Fisherman's Co-op, said the applicant's lawyer said they have sat down with fishermen a couple of times, we don't think so. He said they have a board of directors and officers; they never tried to contact anybody. He said at the northernmost house, we haul boats right there and work on equipment there, and he's got a house 8' from where we're working on boats. There's also a Rockport Fishermen's Association and they haven't been contacted either.

Selectperson Murphy inquired if the applicant or anyone representing the applicant is here tonight; he said they were invited and chose not to attend.

Sandy Jacques, 93 Granite St., said there's a difference between perception and reality. Once it's built, it's a reality. This is a complex project. It's important that the users get input. The citizens of the town obviously have a need for the information. People should receive that information. Over the next weeks, months, suggestions have been documented and dealt with and we should have another meeting to see the final design before it is permitted.

Harold Mallette, 133R Granite Street, recommended that the long pier that is supposedly going to stay in the water, should have an engineering study on that piece by itself. He questioned if there is any provision for fueling the water taxi or other boats.

Ben Lynch said no, there isn't.

Scott Story, Harbormaster, said there are no fueling facilities planned, and there are at least 10 boats on those floats. He said there is no provision for getting those boats out of there. He said four times last year; they had to move those transient boats.

Zenas Seppela, 92 Granite Street, said he is disturbed to hear that an amendment is a judgment call when there have been so many changes from last year. The process is entirely one-sided. A developer can change whatever they want and the town can't comment on it. This is a profound mistake on the part of DEP. CZM encourages water dependent uses. They could subdivide these lots, and could have cookie cutter lots. DEP was in receipt of a letter from Secretary of State Galvin to do with this project being was subject to any federal permitting (Corp. of Engineers), other agencies would have to be involved, such as the national historical commission acting through the Mass. Historical Commission who would ask for input from the Rockport Historical Commission. Is this project, with potential repairs to the bulkhead, be subject to input from other agencies.

Ben Lynch said CZM will have to make a finding on this project. He will confirm Federal Consistently Finding on this project as DEP makes their decision.

Eric Hutchins said the federal trigger would be the placement of floats, not CZM consistency. He said the National Historic Preservation Act jurisdiction would also be triggered by federal action. At that point there would be a review.

Tom Kerans, 139 Main St, said Lot 14 is no longer in play and the developer referenced 13 homes.

G. Falco said there are 13 house lots and 1 non-house lot. He said lot #14 has always been on the plan; anything different they will need to come back.

Edward Hand, 20 Landmark Lane, asked how important parking is in terms of public access to the project from the Chapter 91 standpoint. He said the original plan had 69 parking spaces. He questioned if there is sufficient parking to say you legitimately have public access.

Ben Lynch said there are no specific performance standards in the regulations which say if you have a public access walkway, you must have so many parking spaces. The parking is important, but it's not regulated. We don't have the jurisdiction to require parking.

Peter Beacham said it is important for everyone to know that the Rockport by-law doesn't allow us to have parking regulations on the machine shop, we cannot impose parking as it relates to the machine shop building.

Nancy Potts, 63 Phillips Ave., transient boating area, how do you define transient.

Ben Lynch said transient can mean anything from picking someone up, up to 24 hrs.

Hildy Feuerbach, 15 Pigeon Hill Street, spoke about the amendment to the license. She said the original application provided more for the public, the amenities were much broader. Is there going to be an association to maintain this site? Peter just mentioned that we have no jurisdiction over parking at the machine shop building.

Ben Lynch said this is a license vs. an amendment issue. There are a range of changes that can be made before you must submit a new license. These changes did not trigger a new license here.

Bruce Tarr said there has been a lot of silence regarding this project, so he is appreciative of this meeting. He said it is extremely unfortunate that the developers aren't here. He said Ben Lynch's presence here is critical; he is confident the DEP will deal with this issue. All harbors are important; public access was gained, it would be a sin not to have access on the other side. He said he is concerned about the ability to navigate and boaters need to be included in the equation. His office contacted Congressman's Tierney office, and the Army Corp. of Engineers, about the federal anchorage that was created with the use of public funds that also is an element of public access because we dredged that and created a mooring field and we put in anchorage for public access. This needs public discussion with stakeholders; the other stakeholder needs to be here. The project has evolved; we can't have public discourse. There have been important changes that need to be part of the public record. This is a very important site in our lifetime. There are non-chapter 91 issues that involve planning, we shouldn't be speculating here. In the interest of good will and getting this done, we need more information on the table.

Bill Kozak, 159R Granite Street, said Lot #14 on the tool company property continues along past where 14 ends. There needs to be some designation, it is still part of the property.

Jonathan Ring, Pigeon Hill Street, said this Chapter 91 amendment should have a new hearing. There are so many people here that want to give more input.

Toby Arsenian asked for a show of hands for those who would like a public hearing. The plans have changed; permanently blocked as public use. The float is 400' long, we don't know how long the water taxi will be. He questioned if this a marina under the regulations.

Chairperson Battistelli said Ben is saying he's reviewing what's before him now. If it is warranted, he will make the decision for another public hearing. We don't want to put Ben on the spot now. All of the input is still valid.

Toby Arenian said the input isn't still valid because the plans have changed. The applicant's attorney said the fishermen's off boating facility was part of the original plans, and most recently before the Planning Board his attorney said that was no longer

a part of the project. Since we have representatives from the fishermen here, they said they have spoken to the fisherman. We are now hearing that they haven't spoken to the fishermen. Can we ask them here discuss whether or not these facilities would be useful; 400' with 10 transient slips?

Ben Lynch said they've already got enough here for a marina; 10 slips is a marina. In regard to your other questions, this is an open application. I can't say anything about that right now.

Eric Hutchins, 45 Poole's Lane, said there have been a lot of comments regarding impacts to the existing mooring plan. Federal navigation, Chapter 91, doesn't believe there was ever consensus regarding moorings. Perhaps Bruce Tarr could play a role between federal, state, and local officials regarding a mooring realignment so the public can take a look at it.

Bruce Tarr said he would be happy to pull that together regarding navigability in the harbor. There could be degradation by realignment, to a degree. He has communicated with the Harbor Masters about that, there may be an opportunity to realign this in a positive way.

Richard Loring said there are a lot of issues here; more than Ben Lynch can decide. He said he is appalled at all open issues still at this time and questions that haven't been answered.

Charles Peterman, Mt. Pleasant, inquired if there were any pre-existing conditions at the old and die tool company.

Ben Lynch said he wasn't aware of any.

Susan Waller, 184R Granite Street, said the mooring holders weren't even notified; they haven't seen any feedback from the developers.

Jim Waddell said we're just looking for a little cooperation here from the developers. We all want to please the developer this isn't working. There should be another public hearing.

Judy Hoffman, 8 Babcock Road, recommended a 3D presentation would be helpful here.

Jeff Moulton, Ocean Avenue, said it took 16 years to get a mooring; he was not notified as a mooring holder that something was going to happen in the harbor. He said this need attorneys and architects. He is in favor of seeing the place torn down; he is disappointed that he's paying for a mooring in town and has not been informed about anything.

Selectperson Wilkinson thanked Chairperson Battistelli for working on this issue and pulling all the loose ends together.

9:30 pm Meeting Adjourns

Warrant Signed:

Warrant signed for the Fiscal Year 2014 Payroll and Expenses for the week of 4/10/14 in the amounts of \$105,731.02 and \$672,141.09 respectively.